

110TH CONGRESS  
2D SESSION

# H. R. 5702

To amend titles XVIII and XIX of the Social Security Act to promote the use of advance directives, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 3, 2008

Mr. LEVIN (for himself, Mr. CASTLE, Mr. McDERMOTT, Mr. KILDEE, Mrs. MCCARTHY of New York, Mr. MOORE of Kansas, Mr. FARR, Ms. DELAURO, Ms. SLAUGHTER, Ms. WASSERMAN SCHULTZ, Mr. GEORGE MILLER of California, Ms. HOOLEY, Mr. CUMMINGS, Mr. BLUMENAUER, Mr. HIGGINS, Mr. WU, and Mr. COHEN) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend titles XVIII and XIX of the Social Security Act to promote the use of advance directives, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Advance Directive Promotion Act of 2008”.

6 (b) TABLE OF CONTENTS.—The table of contents of  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Improvement of policies related to the use and portability of advance directives.

Sec. 3. Medicare coverage of an end-of-life planning consultation as part of an initial preventive physical examination.

Sec. 4. National information hotline for end-of-life decisionmaking and hospice care.

Sec. 5. Increasing awareness of the importance of end-of-life planning.

**1 SEC. 2. IMPROVEMENT OF POLICIES RELATED TO THE USE**  
**2 AND PORTABILITY OF ADVANCE DIRECTIVES.**

**3 (a) MEDICARE.**—Section 1866(f) of the Social Secu-  
**4 rity Act (42 U.S.C. 1395cc(f)) is amended—**

**5 (1) in paragraph (1)—**

**6 (A) in subparagraph (B), by inserting**  
**7 “and if presented by the individual (or on be-**  
**8 half of the individual), to include the content of**  
**9 such advance directive in a prominent part of**  
**10 such record” before the semicolon at the end;**

**11 (B) in subparagraph (D), by striking**  
**12 “and” after the semicolon at the end;**

**13 (C) in subparagraph (E), by striking the**  
**14 period at the end and inserting “; and”; and**

**15 (D) by inserting after subparagraph (E)**  
**16 the following new subparagraph:**

**17 “(F) to provide each such individual with the**  
**18 opportunity to discuss issues relating to the informa-**  
**19 tion provided to that individual pursuant to subpara-**  
**20 graph (A) with an appropriately trained profes-**  
**21 sional.”;**

1           (2) in paragraph (3), by striking “a written”  
2           and inserting “an”; and

3           (3) by adding at the end the following new  
4           paragraph:

5           “(5)(A) In addition to the requirements of paragraph  
6 (1), a provider of services shall give effect to a valid ad-  
7 vance directive executed outside the State in which such  
8 directive is presented to the same extent as such provider  
9 would give effect to a valid advance directive executed  
10 under the law of the State in which it is presented. In  
11 the absence of knowledge to the contrary, such a provider  
12 may presume that such an advance directive executed out-  
13 side the State in which it is presented is valid. Nothing  
14 in this paragraph shall be construed to authorize the ad-  
15 ministration of health care treatment otherwise prohibited  
16 by the laws of the State in which the directive is presented.

17           “(B) The provisions of this paragraph shall preempt  
18 any State law to the extent such law is inconsistent with  
19 such provisions. The provisions of this paragraph shall not  
20 preempt any State law that provides for greater port-  
21 ability, more deference to a patient’s wishes, or more lati-  
22 tude in determining a patient’s wishes with respect to  
23 health care.”.

24           (b) MEDICAID.—Section 1902(w) of the Social Secu-  
25 rity Act (42 U.S.C. 1396a(w)) is amended—

1 (1) in paragraph (1)—

2 (A) in subparagraph (B)—

3 (i) by striking “in the individual’s  
4 medical record” and inserting “in a promi-  
5 nent part of the individual’s current med-  
6 ical record”; and

7 (ii) by inserting “and if presented by  
8 the individual (or on behalf of the indi-  
9 vidual), to include the content of such ad-  
10 vance directive in a prominent part of such  
11 record” before the semicolon at the end;

12 (B) in subparagraph (D), by striking  
13 “and” after the semicolon at the end;

14 (C) in subparagraph (E), by striking the  
15 period at the end and inserting “; and”; and

16 (D) by inserting after subparagraph (E)  
17 the following new subparagraph:

18 “(F) to provide each such individual with the  
19 opportunity to discuss issues relating to the informa-  
20 tion provided to that individual pursuant to subpara-  
21 graph (A) with an appropriately trained profes-  
22 sional.”;

23 (2) in paragraph (4), by striking “a written”  
24 and inserting “an”; and

1           (3) by adding at the end the following para-  
2       graph:

3       “(6)(A) In addition to the requirements of paragraph  
4       (1), a provider shall give effect to a valid advance directive  
5       executed outside the State in which such directive is pre-  
6       sented to the same extent as such provider would give ef-  
7       fect to a valid advance directive executed under the law  
8       of the State in which it is presented. In the absence of  
9       knowledge to the contrary, such a provider may presume  
10      that such an advance directive executed outside the State  
11      in which it is presented is valid. Nothing in this paragraph  
12      shall be construed to authorize the administration of  
13      health care treatment otherwise prohibited by the laws of  
14      the State in which the directive is presented.

15      “(B) The provisions of this paragraph shall preempt  
16      any State law to the extent such law is inconsistent with  
17      such provisions. The provisions of this paragraph shall not  
18      preempt any State law that provides for greater port-  
19      ability, more deference to a patient’s wishes, or more lati-  
20      tude in determining a patient’s wishes with respect to  
21      health care.”.

22      (c) EFFECTIVE DATES.—

23           (1) IN GENERAL.—Subject to paragraph (2),  
24      the amendments made by subsections (a) and (b)  
25      shall apply to provider agreements entered into, re-

1       newed, or extended under title XVIII of the Social  
2       Security Act (42 U.S.C. 1395 et seq.), and to State  
3       plans under title XIX of such Act (42 U.S.C. 1396  
4       et seq.), on or after such date as the Secretary of  
5       Health and Human Services specifies, but in no case  
6       may such date be later than 1 year after the date  
7       of enactment of this Act.

8               (2) EXTENSION OF EFFECTIVE DATE FOR  
9       STATE LAW AMENDMENT.—In the case of a State  
10      plan under title XIX of the Social Security Act (42  
11      U.S.C. 1396 et seq.) which the Secretary of Health  
12      and Human Services determines requires State legis-  
13      lation in order for the plan to meet the additional  
14      requirements imposed by the amendments made by  
15      subsection (b), the State plan shall not be regarded  
16      as failing to comply with the requirements of such  
17      title solely on the basis of its failure to meet these  
18      additional requirements before the first day of the  
19      first calendar quarter beginning after the close of  
20      the first regular session of the State legislature that  
21      begins after the date of enactment of this Act. For  
22      purposes of the previous sentence, in the case of a  
23      State that has a 2-year legislative session, each year  
24      of the session is considered to be a separate regular  
25      session of the State legislature.

1 **SEC. 3. MEDICARE COVERAGE OF AN END-OF-LIFE PLAN-**  
2 **NING CONSULTATION AS PART OF AN INITIAL**  
3 **PREVENTIVE PHYSICAL EXAMINATION.**

4 (a) IN GENERAL.—Section 1861(w) of the Social  
5 Security Act (42 U.S.C. 1395x(w)) is amended—

6 (1) in paragraph (1), by striking “paragraph  
7 (2),” and inserting “paragraph (2) and an end-of-  
8 life planning consultation (as defined in paragraph  
9 (3)),”; and

10 (2) by adding at the end the following new  
11 paragraph:

12 “(3) For purposes of paragraph (1), the term ‘end-  
13 of-life planning consultation’ means a consultation be-  
14 tween the physician and an individual regarding—

15 “(A) the importance of preparing advance di-  
16 rectives in case an injury or illness causes the indi-  
17 vidual to be unable to make health care decisions;

18 “(B) the situations in which an advance direc-  
19 tive is likely to be relied upon;

20 “(C) the reasons why the development of a  
21 comprehensive end-of-life plan is beneficial and the  
22 reasons why such a plan should be updated periodi-  
23 cally as the health of the individual changes;

24 “(D) the identification of resources that an in-  
25 dividual may use to determine the requirements of  
26 the State in which such individual resides so that

1 the treatment wishes of that individual will be car-  
 2 ried out if the individual is unable to communicate  
 3 those wishes, including requirements regarding the  
 4 designation of a surrogate decision maker (also  
 5 known as a health care proxy); and

6 “(E) whether or not the physician is willing to  
 7 follow the individual’s wishes as expressed in an ad-  
 8 vance directive.”.

9 (b) EFFECTIVE DATE.—The amendments made by  
 10 this section shall apply to initial preventive physical exami-  
 11 nations furnished on or after January 1, 2009.

12 **SEC. 4. NATIONAL INFORMATION HOTLINE FOR END-OF-**  
 13 **LIFE DECISIONMAKING AND HOSPICE CARE.**

14 The Secretary of Health and Human Services, acting  
 15 through the Administrator of the Centers for Medicare &  
 16 Medicaid Services, shall operate directly, or by grant, con-  
 17 tract, or interagency agreement, out of funds otherwise  
 18 appropriated to the Secretary, a clearinghouse and a 24-  
 19 hour toll-free telephone hotline in order to provide con-  
 20 sumer information about advance directives (as defined in  
 21 section 1866(f)(3) of the Social Security Act (42 U.S.C.  
 22 1395cc(f)(3)), as amended by section 2(a)), end-of-life de-  
 23 cisionmaking, and available end-of-life and hospice care  
 24 services. In carrying out the preceding sentence, the Ad-  
 25 ministrator may designate an existing clearinghouse and

1 24-hour toll-free telephone hotline or, if no such entity is  
2 appropriate, may establish a new clearinghouse and a 24-  
3 hour toll-free telephone hotline.

4 **SEC. 5. INCREASING AWARENESS OF THE IMPORTANCE OF**  
5 **END-OF-LIFE PLANNING.**

6 Title III of the Public Health Service Act (42 U.S.C.  
7 241 et seq.) is amended by adding at the end the following  
8 new part:

9 **“PART S—PROGRAMS TO INCREASE AWARENESS**  
10 **OF ADVANCE DIRECTIVE PLANNING ISSUES**  
11 **“SEC. 399FF. ADVANCE DIRECTIVE EDUCATION CAM-**  
12 **PAIGNS.**

13 **“(a) ADVANCE DIRECTIVE EDUCATION CAMPAIGN.—**  
14 The Secretary shall, directly or through grants awarded  
15 under subsection (b), conduct a national public education  
16 campaign—

17 **“(1) to raise public awareness of the impor-**  
18 **tance of planning for care near the end of life;**

19 **“(2) to improve the public’s understanding of**  
20 **the various situations in which individuals may find**  
21 **themselves if they become unable to express their**  
22 **health care wishes;**

23 **“(3) to explain the need for readily available**  
24 **legal documents that express an individual’s wishes,**  
25 **through advance directives (including living wills,**

1 comfort care orders, and durable powers of attorney  
2 for health care); and

3 “(4) to educate the public about the availability  
4 of hospice care and palliative care.

5 “(b) GRANTS.—

6 “(1) IN GENERAL.—The Secretary shall use at  
7 least 60 percent of the funds appropriated under  
8 subsection (c) for the purpose of awarding grants to  
9 public or nonprofit private entities (including States  
10 or political subdivisions of a State), or a consortium  
11 of any of such entities, for the purpose of conducting  
12 education campaigns under subsection (a).

13 “(2) PERIOD.—Any grant awarded under para-  
14 graph (1) shall be for a period of 3 years.

15 “(c) AUTHORIZATION OF APPROPRIATIONS.—There  
16 are authorized to be appropriated to carry out this section  
17 \$25,000,000.”.

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